

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Smartmatic USA Corp., et al.,)
) File No. 0:22-cv-00098
) (JMB/JFD)
Plaintiffs,)
)
vs.)
)
Michael J. Lindell, et al.,) St. Paul, Minnesota
) **August 9, 2024**
Defendants.) 10:00 a.m.
)

BEFORE THE HONORABLE JOHN F. DOCHERTY
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE
(MOTION)

APPEARANCES (via Zoom video conference):

For the Plaintiffs: BENESCH FRIEDLANDER COPLAN & ARONOFF
Timothy M. Frey
71 South Wacker Drive, Suite 1600
Chicago, Illinois 60606

BENESCH FRIEDLANDER COPLAN & ARONOFF
James R. Bedell
127 Public Square, Suite 4900
Cleveland, Ohio 44114

ROBINS KAPLAN LLP
William E. Manske
800 LaSalle Avenue, Suite 2800
Minneapolis, Minnesota 55402-2015

For the Defendants: MCSWEENEY, CYNKAR & KACHOUROFF, PLLC
Christopher Kachouroff
13649 Office Place, Suite 101
Woodbridge, Virginia 22192

Court Reporter: Nancy J. Meyer
Registered Professional Reporter
Certified Realtime Reporter
316 North Robert Street
St. Paul, Minnesota 55101

P R O C E E D I N G S

IN OPEN COURT

(VIA ZOOM VIDEO CONFERENCE)

THE COURT: Good morning, everybody. This is Magistrate Judge Docherty.

We are here on a hearing on a motion by the plaintiff to amend the scheduling order in this case to allow three depositions to be taken after the close of fact discovery. I have read the pleadings and studied the pleadings. I have read the declaration and the exhibits, and I feel ready to proceed on this.

You've made your appearances. The law clerk has checked you-all in. So I think we're ready to proceed.

Mr. Frey, are you going to be speaking for the plaintiffs?

MR. FREY: Yes, Your Honor.

THE COURT: Okay. I don't have, I don't think, very many questions for you. Do you have anything you want to tell me about over and above what was in the papers you submitted, the memo of law, the motion itself, and so on?

MR. FREY: No, Your Honor, nothing really to add to that.

You know, Smartmatic uses as a fairly limited request for relief. We do not think that any of the depositions

1 should be overly strenuous, take too much time, and we hope
2 to just follow the formal procedures to get, you know, the
3 amendment to the scheduling order so we can complete those.
4 And then we're -- that is what we're looking for to move on
5 with the -- finish the discovery in this case, aside from
6 those motions to compel that are before Your Honor in a week
7 or so.

8 THE COURT: Right. Understood.

9 Mr. Kachouroff, I guess what I'm -- I want to hear
10 anything that you think that's important to convey to me,
11 but on the motion that's before us, the motion to amend the
12 scheduling order and allow these three depositions, how, if
13 at all, would your client be prejudiced by allowing this?

14 Mr. Kachouroff, you're still on mute.

15 MR. KACHOUROFF: I'm sorry, Your Honor.

16 THE COURT: No problem.

17 MR. KACHOUROFF: Because there's been no
18 reciprocation from the plaintiffs, number one.

19 Number two, this calls for a much broader approach to
20 the scheduling order, which, if the Court recalls, in the
21 last hearing, the plaintiff said that they did not want to
22 amend it. I tried to do it then. I said we were jamming up
23 times.

24 One -- one second, Your Honor. I'm sorry.

25 So one of the issues was that we start to back up

1 dates. And as things begin to proceed, dates begin to get
2 cramped. And that's a problem for me with my resources,
3 what I have available to me. I think I estimated in one
4 of my pleadings I was looking at 10 terabytes. While I
5 didn't wait for the hard drive to finish, it's actually
6 30 terabytes. And I'm at a disadvantage in that regard and
7 that's the plaintiffs' fault. I'm trying not to make hay of
8 that because I'm trying to do the best I can with what I
9 have.

10 But if the Court is going to amend the scheduling
11 order, I would, first -- my first argument was that the
12 Court should not amend it. You should take them at their
13 word at the last hearing, which is there was no need to
14 amend the fact discovery deadline, and not grant the motion
15 for that reason. I think the Court's unlikely to do that.
16 I think the Court is going to grant the motion to amend.

17 So based on that, I would just ask the Court to be
18 fair and make it amenable to both parties. The only thing I
19 requested is the offer to do my 30(b)(6). Now, granted,
20 that's -- the Court has ruled and I accept it; that the --
21 that is not a motion before the Court, and I have called the
22 clerk this morning and conferred with Mr. Frey. The first
23 available date is the 29th.

24 So my point is whatever you do is going to affect the
25 scheduling order in the future. And if you extend a

1 deadline now, I think all deadlines need to be extended so
2 we're not cramped up coming back to you every few weeks
3 looking for more time.

4 THE COURT: Okay.

5 MR. KACHOUROFF: And we have -- the dispositive
6 motions are due September 23rd. So by the time this all
7 comes to bear, we're looking close to the end of August.
8 And that's not a lot of time to get these transcripts in and
9 assimilated for purposes of summary judgment.

10 THE COURT: All right. Here's what I'm going to
11 do. First of all, yes, Mr. Kachouroff, you are right.
12 Let's take these things in turn.

13 And, yes, I am going to grant the motion. The motion
14 is granted. There's good cause for it. The papers
15 submitted by Smartmatic demonstrate diligence in attempting
16 to schedule the depositions. I am not saying that it is
17 anybody's fault that it didn't happen. These are all busy
18 people, and it is difficult to schedule, and I get that.

19 I'm going to find -- and, Mr. Kachouroff, I'm going
20 to have more to say in a minute, so don't jump when I say
21 this. But I am going to find as to this specific motion,
22 MyPillow and Mr. Lindell are not prejudiced. And as I say,
23 there's more coming on that, so hold the phone.

24 The fact discovery deadline is extended at this time
25 only to allow plaintiffs to take the Rule 30(b)(6)

1 deposition of MyPillow, the 30(b)(6) deposition of a
2 representative of Lindell Management, LLC, and what I
3 understand to be the third-party deposition of Mr. Conan
4 Hayes. I am not going to issue a written order on that. If
5 anyone wants to take that up to the district judge,
6 Judge Bryan, get a transcript of what I just said because
7 that is going to be my order.

8 Now, Mr. Kachouroff has raised for the second time, I
9 acknowledge, a valid point, which is that the knock-on
10 consequences of granting motions like this need to be
11 considered. And what I'm looking for in that regard,
12 Mr. Kachouroff, is motions from you. And it does seem that
13 there has been, you know, an acclimation period in getting
14 set with the District of Minnesota's local rules. I
15 understand that we do have probably more rules than some
16 other districts.

17 On the other hand, I will say, I have read things
18 that are written by lawyers that are incomprehensible, and I
19 do think the local rules -- although they do need to be
20 consulted -- are reasonably clear and provide an okay road
21 map. You need A, you need B, you need C, you need D, and
22 here's the time frame that you get it done.

23 So you have had the unfortunate and, I'm sure,
24 frustrating experience of having things turned aside for
25 procedural reasons. I don't want this case to be decided on

1 procedural reasons. I want it to be decided on the facts
2 and on the law. And, Mr. Kachouroff, I think that you have
3 described this morning and have described in your response
4 and opposition to this particular motion, motions that you
5 would want to bring on behalf of your client. And I think
6 that if you -- and, frankly, your local counsel should be
7 assisting with this. But if you can get those motions
8 turned in -- I'm not guaranteeing success. I'm not
9 guaranteeing a hundred percent satisfaction. But I am
10 guaranteeing you will get a hearing. And so far that's been
11 something of a stumbling block.

12 But I want to work through that, and I want this case
13 to proceed -- you know, rational litigation that focuses on
14 what was said, when it was said, and what the damages are,
15 not on where the procedural rules fall. So I'd like to get
16 that transition going. And I think you found the Clerk of
17 Court helpful this morning, Mr. Kachouroff, and I can assure
18 you that they will remain helpful in the future.

19 So that particular motion is granted.

20 Mr. Kachouroff, you had something to say.

21 MR. KACHOUROFF: Just briefly. We're not changing
22 any of the timelines, I suppose, on the motions then?

23 THE COURT: We're not changing the timelines on
24 the motions that are currently pending. We've got this
25 motion, and we've got a motion to compel by plaintiffs on

1 the 20th. I believe that you are in the process of noticing
2 a motion for the 29th.

3 MR. KACHOUROFF: Yes, Your Honor.

4 THE COURT: And you should, I think, propose your
5 new scheduling order, changing things like dispositive
6 motions and other things to give you the breathing room that
7 you're saying you don't currently have at the time.

8 But I don't -- you know, I stress that I do want the
9 case decided on the facts and the law, but I also want
10 motions that I'm prepared to rule on. And so I do look to
11 the parties not just that we want an extension of the time,
12 but we want an extension of this much on this deadline and
13 that much on this deadline and here's the reasons. And then
14 the other side comes back and has something to react to.
15 And I think that -- I'm in a position of making a much
16 better decision when things are teed up properly like that.
17 Does that make sense?

18 MR. KACHOUROFF: It does. And, Your Honor, just
19 for your edification, I suppose, when I talked to Tim Frey,
20 my colleague, about filing the motion to compel on August
21 the 5th, he was under the impression that the time for
22 filing dispositive motions had passed. He showed me the
23 scheduling order, and I was confused because -- the Court
24 came back and said -- ordered that my motion for the 20th
25 was stricken.

1 There was confusion about what applied, whether it
2 was the scheduling order or whether it was the local rules.
3 So I have read the local rules. I do find them clear. But
4 there was a little bit of confusion, so the Court knows. It
5 wasn't as though I was sitting around not familiar with the
6 local rules versus the scheduling order.

7 THE COURT: No, no. And I saw that on what you
8 filed, I believe, yesterday. I think part of the problem
9 was that your opposition to Smartmatic's motion to amend the
10 scheduling order took the form -- there was opposition in
11 there, but there was also a motion in there. And those two
12 need to be untangled.

13 MR. KACHOUROFF: Okay. I'm sure I can work with
14 Mr. Frey on scheduling dates. They've been fairly -- I
15 think we've been working fairly well together. When we
16 disagree, we disagree. It is what it is.

17 THE COURT: Okay.

18 All right. Mr. Frey, is there anything else for
19 today?

20 MR. FREY: No, not from the plaintiffs. Thank
21 you.

22 THE COURT: All right. Mr. Kachouroff, anything
23 else for today?

24 MR. KACHOUROFF: No, sir. Thank you.

25 THE COURT: All right. Thank you all very much.

1 Have a good weekend. And, yeah, we're adjourned. Thank
2 you.

3 (Proceedings were concluded at 11:12 a.m.)

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5 (Proceedings reported by certified stenographer;
6 transcript produced with computer.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Nancy J. Meyer, Registered Diplomate Reporter,
Certified Realtime Reporter, do hereby certify that the
above and foregoing constitutes a true and accurate
transcript of my stenograph notes and is a full, true, and
complete transcript of the proceedings to the best of my
ability.

Dated this 12th day of August, 2024.

/s/ Nancy J. Meyer

Nancy J. Meyer
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter